THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 19th September, 2006

W.P.No.5512 of 1995

Between:

N. Thirupathi Rao … Petitioner

and

Girijan Cooperative Corporation Ltd.,
represented by its Board of Directors,
Head Office: GCC Ltd., Visakhapatnam,
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.5512 of 1995

ORDER:

This Writ Petition is filed seeking a Mandamus directing respondents 1 to 3 to grant benefit of seniority in the cadre of Senior Assistant with effect from 5-8-1977 to the petitioner and for a consequential direction to promote him as Junior Manager with effect from the date on which the 4th respondent was promoted as Junior Manager i.e. 13-9-1994 with all attendant benefits.

It is stated in the writ affidavit that the Government of Andhra Pradesh originally established the Andhra Pradesh Scheduled Tribes Finance and Development Corporation and registered the same as a Company under the Companies Act on 14-4-1956. In order to get better facilities, a new organization came into being on 26-10-1956 under the Cooperative Societies Act. This institution started functioning from 5-4-1957 with headquarters at Visakhapatnam and it continued to function under its original name till 18-2-1970 from which date, its name was changed as Girijan Cooperative Corporation Limited. The entire shareholding of the said Corporation is held by the Government of Andhra Pradesh. All the Board of Directors and the Chairman & Managing Director of the Corporation are appointed by the State Government. As such, the Corporation is a 'State' within the ambit of Article 12 of the Constitution of India and it is amenable to the writ jurisdiction of this Court.

It appears that the petitioner is a Graduate and was appointed

as a Salesman with effect from 6-5-1971 in the respondent-Corporation. Subsequently, he was promoted as Junior Accountant in the cadre of Junior Assistant with effect from 8-9-1971. While so, the respondent-Corporation took a decision that the Junior Assistants, who are graduates and who have completed five years of service are entitled for being promoted automatically to the post of Senior Assistant. Accordingly, the following persons were appointed as Senior Assistants.

Sl.No.	Name of the person	Date of joining in Jr. Assistant cadre	Date of promotion to the post of Sr.Asst
1	Sri M. Nagabhushanam	1-10-1971	21-12-1977
2	Sri S. Rami Reddy	26-10-1971	21-12-1977
3	Sri N.Ramakrishna Rao	26-10-1971	21-12-1977
4	Sri K. Siva Rama Rao	31-3-1972	21-12-1977
5	Sri G. Shyamal Rao	22-7-1971	5-8-1977

Among the said candidates, first 4 are from Andhra Region, whereas the fifth candidate-G.Shyamal Rao is from Telangana Region. Though the petitioner completed five years of service in the cadre of Junior Assistant on 7-9-1976 itself and possesses requisite qualification of Graduation, he was not promoted to the cadre of Senior Assistant. The respondent-Corporation repeatedly assured him that his case would be considered; however, no action was taken and ultimately, he was promoted as Senior Assistant with effect from 21-11-1978. While working as Senior Assistant, he was sent on deputation to A.P. Tourism Development Corporation in the year 1980 and there he was promoted as Assistant Manager. The post of Assistant Manager in the A.P. Tourism Development Corporation is equivalent to that of Junior Manager in the respondent-corporation. Further, while working in A.P. Tourism Development Corporation, he was sent on deputation to the Asian Games in New Delhi as Controller (Catering). He worked in

New Delhi for the entire duration of Asian Games. On completion of 3 years service in the A.P. Tourism Development Corporation, he was repatriated to the respondent-Corporation in October,1983. He made a request for restoration of his seniority in the cadre of Senior Assistant, but the same was rejected. He continued to work in the cadre of Senior Assistant till the date of filing of the Writ Petition. From 1-9-1994, the Branch Offices of the respondent-Corporation have been reorganized and renamed as Girijan Primary Cooperative Marketing Societies. The employees of the respondent-Corporation are sent on deputation to these Primary Marketing Societies. He was working at Girijan Primary Cooperative Marketing Society, Bhadrachalam as Senior Accountant in the cadre of Senior Assistant with effect from 1-9-1994 onwards (it seems, during the pendency of the Writ Petition, the petitioner was promoted as Junior Manager). Further, the 4th respondent was promoted as Senior Assistant in the year 1980, while he was promoted as Senior Assistant in the year 1978 itself; however, the name of the 4th respondent was placed higher in the seniority list of Senior Assistants, granting him the benefit of promotion from Junior Assistant to Senior Assistant on completion of five years service. Therefore, he filed a representation on 30-4-1991 followed by another representation dated 27-11-1991 to treat him as senior to the 4th respondent. But, the same was rejected by the 2nd respondent vide Proceedings No.RDS 7027/88, dated 15-7-1992. Against the said Order, he preferred an appeal to the Chairman of the respondent-Corporation on 26-9-1992 and the Chairman endorsed on 8-10-1992 “please find the enclosed representation and consider the request of the individual on par with the case of Sri V. Satyanarayana regarding restoration of his seniority immediately”. However, the same was neither taken up nor considered. In the meanwhile, the employees,

who joined subsequent to him in the Corporation including the 4th respondent have been promoted as Junior Managers vide Proceedings dated 13-9-1994. The cadres of Junior Assistant and Senior Assistant come under non-executive category. The respondent-Corporation carries out its operations in both Andhra and Telangana Regions. Upto the cadre of Senior Assistants, a separate seniority list is maintained for Telangana and Andhra Regions. However, from the cadre of Junior Managers, which is within the executive category, a common seniority list is maintained. Though a separate seniority list is maintained for Senior Assistants in both Telangana and Andhra Regions, while promoting Senior Assistants to the cadre of Junior Manager, the date of their appointment as Senior Assistant is taken into consideration. As such, the date of promotion as Senior Assistant is a relevant date for promotion to the cadre of Junior Manager. In spite of the fact that separate seniority lists are maintained for Andhra and Telangana Regions, promotion of Senior Assistants in Andhra Region has an affect on the Senior Assistants of Telangana Region and *vice versa*. The plea of the petitioner is that his case also needs to be considered on par with the 4th respondent, who made a representation to the 2nd respondent and the 2nd respondent had considered the seniority of the 4th respondent in the cadre of Senior Assistant with retrospective effect from 5-8-1977. Therefore, non-consideration of his case on par with the 4th respondent is arbitrary and illegal.

A detailed counter affidavit has been filed on behalf of respondents 1 to 3 denying the allegations made by the petitioner. It is asserted that as per the Service Rules of the Corporation upto the cadre of Senior Assistant, the services of the Corporation are on

regional basis i.e. Telangana and Andhra and even for selections from the cadre of Junior Assistant to Senior Assistant, the cases were dealt with separately for Andhra Region and Telangana Region. Further, as against the five cases mentioned by the petitioner, first four cases relate to Andhra Region and the fifth case i.e. G.Shyamal Rao relates to Telangana Region. While considering cases for selection as Senior Assistants from the Junior Assistants during 1977, they were finalized on regional basis. Promotion and selection would be taken up basing upon the need and vacancies arising at appropriate time. Even as per service rules, promotion is not a right and it is the discretion of the Managing Director. When the vacancy arose in November,1978, the petitioner was also promoted as Senior Assistant. The plea of the petitioner that he was on deputation with A.P. Tourism Development Corporation and he had assignment at New Delhi have no relevance to the present case. Petitioner cannot compare himself with the 4th respondent. It is true that the 4th respondent represented for considering his case on par with other junior employees selected as Senior Assistants of Andhra Region in 1977. Since it was found that he was a senior in the cadre of Junior Assistant above all the Junior Assistants selected from Andhra Region at that time and he was also a Graduate, his case was reviewed and retrospective seniority benefit was extended to him. In Telangana Region, there is no person junior to the petitioner as Junior Assistant, was promoted as Senior Assistant or the seniority of the petitioner was ignored in the cadre of Junior Assistant at any point of time. Therefore, there was no loss of benefit to the petitioner when compared to his seniors in Telangana Region and thus, there is no ground made out for reviewing the case of the petitioner and as such, the case of the petitioner was rightly rejected.

Heard both sides.

The only question that arises for consideration is whether the petitioner is entitled to compare himself with that of the 4th respondent, who is in Andhra Region and whose case was considered for promotion with retrospective effect in the cadre of Senior Assistant from 5-8-1977 ?

Admittedly, even according to the petitioner, he hails from Telangana Region and the 4th respondent hails from Andhra Region. Further, upto the cadre of Senior Assistant, the Regional Managers of the respective Regions i.e. Telangana Region and Andhra Region are entitled for appointment and promotion. It is not in dispute that the petitioner was selected in Telangana Region and it is also not in dispute that any one, who is junior to him, was promoted as Senior Assistant in Telangana Region, before he was promoted as Senior Assistant. The whole grievance of the petitioner is that the 4th respondent, who was appointed and promoted to the cadre of Senior Assistant in the Andhra Region, was given seniority in the cadre of Senior Assistant with retrospective effect. Therefore, such a benefit also must be considered in his favour. This seems to be unreasonable. In the counter affidavit of respondents 1 to 3, it is categorically explained that the case of the 4th respondent-V.Satyanarayana was reviewed, since he was able to demonstrate that many of his juniors were promoted to the cadre of Senior Assistant prior to him, though he is a Graduate and entitled for being promoted immediately after completion of five years in the vacancies that were available. Since it is not the case of the petitioner that any of his juniors in Telangana Region were promoted prior to his promotion as Senior Assistant, neither he is entitled for review of his case for promotion with retrospective effect nor he can compare himself with

that of the 4th respondent. Further, both the learned counsel have agreed that there are no Rules, in this regard, to show that the entire State is a unit for the purpose of seniority in the cadre of Junior Assistant and Senior Assistant. On the other hand, it was made clear that there will be one Regional Manager for Telangana Region and another Regional Manager for Andhra Region and he is competent to appoint Junior Assistants and also promote them to the post of Senior Assistant on the basis of original seniority of the Junior Assistant in the respective Regions. Once this is so, the claim of the petitioner is only speculative and imaginary and he is not entitled for the relief as sought for in the Writ Petition. The Writ Petition is devoid of merits and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

19-9-2006

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